

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CHARLENE BANKS-SIMON, MARK SIMON,
and MOSES JOSIAH,

Plaintiffs,

ORDER
16-CV-4867 (MKB) (LB)

v.

STEVE CARDI,

Defendant.

MARGO K. BRODIE, United States District Judge:

Plaintiffs Charlene Banks-Simon, Mark Simon, and Moses Josiah, proceeding *pro se*, commenced the above-captioned action on August 31, 2016 against, *inter alia*, Defendant Steve Cardi.¹ (Compl., Docket Entry No. 1.) In the one-page Complaint, Plaintiffs allege that Defendant “conspired to file fraudulent documents causing harm and injury” to Plaintiffs’ property and engaged in “extortion.” (*Id.*) By report and recommendation dated December 9, 2019, Magistrate Judge Lois Bloom *sua sponte* recommended that the Court dismiss the action without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure “because Plaintiffs failed to file proof of proper service on [D]efendant Cardi by October 24, 2019,” (the “R&R”). (R&R, Docket Entry No. 79.) No party has objected to the R&R.

¹ Plaintiffs also named Bank of America, N.A., Annamaria Moureaux, Elizabeth A. Clarke, Kristina Brizee, and Jane Doe as Defendants in the Complaint. (Compl., Docket Entry No. 1.) Although the Complaint did not name J.M. Adjustment Services LLC and Justin Manni as defendants, Plaintiffs served them with summonses and the Complaint. (Letter dated Oct. 13, 2016, Docket Entry No. 10.) These defendants moved to dismiss the action for various reasons and, by order dated September 28, 2017, Judge Joan Azrak granted the motions and dismissed the action against these defendants. (*See* Order Dismissing Parties, Docket Entry No. 68; Mem. & Order dated Sept. 28, 2017, Docket Entry No. 53.)

A district court reviewing a magistrate judge's recommended ruling "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "Where parties receive clear notice of the consequences, failure to timely object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision." *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P&C Food Markets, Inc.*, 313 F. 3d 758, 766 (2d Cir. 2002) (citing *Small v. Sec'y of Health & Human Servs.*, 892 F. 2d 15, 16 (2d Cir. 1989) (per curiam))); see also *Sepe v. N.Y. State Ins. Fund*, 466 F. App'x 49, 50 (2d Cir. 2012) (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)); see also *Almonte v. Suffolk Cty.*, 531 F. App'x 107, 109 (2d Cir. 2013) ("As a rule, a party's failure to object to any purported error or omission in a magistrate judge's report waives further judicial review of the point." (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) ("[A] party waives appellate review of a decision in a magistrate judge's [r]eport and [r]ecommendation if the party fails to file timely objections designating the particular issue." (citations omitted)).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R pursuant to 28 U.S.C. § 636(b)(1), and dismisses the action for insufficient service of process pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

The Clerk of Court is directed to close this case and mail a copy of this Order to Charlene Banks-Simon, Mark Simon, and Moses Josiah c/o Charlene Banks-Simon at 218 East Park Avenue #205 Long Beach, NY 11561.

Dated: April 14, 2020
Brooklyn, New York

SO ORDERED:

s/ MKB
MARGO K. BRODIE
United States District Judge